



47 CFR Part 54

[WC Docket Nos. 21-450; FCC 22-87; FR ID 120401]

Affordable Connectivity Program; Emergency Broadband Benefit Program

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In the Further Notice of Proposed Rulemaking, the Federal Communications Commission (Commission or FCC) seeks comments on the statutory requirement to revise Affordable Connectivity Program (or ACP) Transparency Data Collection rules, the value of subscriber-level data and methods of obtaining and encouraging subscriber consent, and whether the Commission should also collect additional data.

DATES: Comments are due on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER] and reply comments are due on or before [INSERT DATE 45 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. If you anticipate that you will be submitting comments but find it difficult to do so within the period of time allowed by this document, you should advise the listed contact as soon as possible.

ADDRESSES: All documents filed with the Commission pursuant to the requirements of this order should refer to WC Docket No. 21-450. Unless otherwise specified, such documents may be filed by any of the following methods:

- *Electronic Filers:* You may file documents electronically by accessing the Commission's Electronic Comment Filing System (ECFS) at <https://www.fcc.gov/ecfs/filings>.
- *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing. Filings can be sent by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. Parties that need to submit confidential filings to the Commission should follow the instructions provided in the Commission's March 31, 2020 public notice regarding the procedures for submission of confidential materials. *See FCC Provides Further Instructions Regarding Submission of Confidential Materials*, Public Notice, DA 20-361, 35 FCC Rcd 2973 (OMD, March 31, 2020), https://docs.fcc.gov/public/attachments/DA-20-361A1_Rcd.pdf. All

filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to Federal Communications Commission, 45 L Street NE, Washington, DC 20554.
- Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID-19. See *FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy*, Public Notice, DA 20-304 (March 19, 2020), <https://www.fcc.gov/document/fcc-closes-headquarters-open-window-and-changes-hand-delivery-policy>.

People with Disabilities. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to fcc504@fcc.gov or call the Consumer and Governmental Affairs Bureau at 202-418-0530.

FOR FURTHER INFORMATION CONTACT: Eric Wu, Attorney Advisor, Telecommunications Access Policy Division, Wireline Competition Bureau, at (202) 418-7400 or eric.wu@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Further Notice of Proposed Rulemaking (FNPRM) in WC Docket Nos. 21-450, FCC 22-87, adopted on November 15, 2022 and released on November 23, 2022. The full text of this document is available at <https://docs.fcc.gov/public/attachments/FCC-22-87A1.pdf>. The Fourth Report and Order that was adopted concurrently with the FNPRM is to be published elsewhere in the Federal Register.

I. DISCUSSION

1. In the Further Notice of Proposed Rulemaking (FNPRM), the Commission seeks additional comments on: (1) the statutory requirement to revise ACP Transparency Data Collection rules adopted in the Fourth Report and Order (Order); (2) the value of subscriber-level data and methods of obtaining and encouraging subscriber consent; and (3) whether the Commission should also collect additional data, such as more granular aggregated data, data related to enrollment processes, the digital

divide, price, or plan availability or performance.

2. *Data Collection Revisions.* The Commission asked about the statutory requirement to revise the ACP Transparency Data Collection rules to verify the accuracy of the data submitted by providers in the *ACP Data Collection Notice* and received little comment other than from ACA Connects. Although the Infrastructure Act could be interpreted as requiring the Commission to collect and analyze data before revising the Commission rules, it could also be interpreted as not making data collection a prerequisite to doing so. The Commission believes that Congress' directive to revisit the data collection rules can be accomplished by reviewing and beginning to revise the rules of the collection, including for data accuracy verification, within the six-month statutory timeframe. Accordingly, the Commission seeks comment on how the rules in the Order, 87 FR XXXX, month xx, 2022, could be improved, such as by reducing burdens on smaller providers or, as set forth following, collecting subscriber-level data, more granular aggregated data, or data related to the digital divide or plan availability. In particular, the Commission seeks comments on how the rules set forth in the Order could be revised to verify the accuracy of the data to be collected thereunder. How should the Commission track and verify the accuracy of data? How should the Commission protect against inaccuracies in the data? Should rule revisions contemplate adding new collection variables to improve or refine the data collected? How can the Commission structure future rule revisions to minimize the economic impact on small providers? As noted proceeding, the Commission delegates authority to the Bureau to issue a supplemental notice seeking comment on these issues, if necessary to enhance the record. The Commission also seeks comments on whether this approach complies with section 60502(c)(2) of the Infrastructure Act.

3. *Subscriber-Level Data.* Additionally, although the Commission is not requiring providers to collect and submit via NLAD subscriber-level data at this time, the Commission seeks additional comment on the benefits and costs of collecting subscriber-level data. Does the Commission have authority to collect subscriber-level data under the Infrastructure Act or other sources of authority? Would subscriber-level data on price and a unique plan identifier be more useful relative to the aggregated data to be collected under this Order, and, if so, how, why, and to what extent? Would subscriber-level data allow the Commission to better understand and assess service price and plan characteristics? If so, how could the Commission use this better understanding to further the Commission

performance objectives for the Affordable Connectivity Program? For example, as noted in the *ACP Data Collection Notice*, a subscriber-level collection can help to “study how subscriber plan choices and preferences for plan characteristics vary by geographic area” and could also improve consumer outreach efforts, which could not be targeted based on a high-level aggregate collection. Are there additional benefits of a subscriber-level collection in meeting the performance goals of the program? Would providing additional fields in NLAD, for example, including price and a unique plan identifier, impose significant burdens on providers or subscribers?

4. Collecting subscriber-level data, however, means getting subscriber consent, and the Commission seeks additional comments on how consent could be obtained. Should providers be required to obtain or seek consent upon enrolling new subscribers? What about when transferring-in subscribers who are moving the ACP benefit to another provider? Additionally, the Commission seeks comments on obtaining consent from existing ACP households. Although commenters representing providers asserted this would be burdensome in response to the *ACP Data Collection Notice*, the Commission seeks further comments on ways to seek consent by using existing systems or other required or voluntary contacts with enrolled households. For subscribers already enrolled based on a qualified ACP application in the National Verifier, should USAC obtain or seek consent from these subscribers? Or is the broadband provider better positioned to obtain consent? Should USAC seek or obtain consent upon recertification? Are there other touchpoints between USAC and subscribers that would permit consent? If consent is sought or obtained via USAC in the application or through recertification, how should consent be obtained from ACP subscribers who do not have their eligibility determined via the National Verifier because they qualify via participation in a provider’s low-income program or are enrolled in Lifeline and do not have to apply again for the Affordable Connectivity Program? Is the enrolling provider in the best position to obtain consent? Similarly, how could consent be obtained from subscribers who are recertified automatically through the National Verifier or through their Lifeline recertification?

5. The Commission seeks further comments on whether consent should be mandatory or optional for subscribers. If consent is mandatory, what would be the likely effect on ACP enrollment for new subscribers and existing subscribers? If consent is optional for subscribers, how would this affect the quantity and quality of the resulting data? How could the Commission encourage or incentivize

subscribers to consent? Should the Commission make consent mandatory, that is, a condition for ACP participation, for new subscribers or those transferring the affordable connectivity benefit, as is the case for the consent required to transmit data such as name and address under 47 CFR 54.1806(d), while leaving consent optional for existing subscribers to whom providers must reach out? Would making consent mandatory for new subscribers upon enrollment improve the data collection? Would making consent mandatory for existing subscribers upon transferring the affordable connectivity benefit improve the data collection? If consent were to be made optional for subscribers but requesting consent mandatory for providers, how could the Commission ensure that providers timely seek and obtain consent?

6. *Other Levels of Aggregation.* Although the rules in the Order require providers to submit data at the ZIP code level, the Commission also seeks comments on whether aggregated data should be collected or aggregated on a level smaller than ZIP code, such as by county or Census tract, either in addition to or instead of ZIP code. What would be the benefits and costs of collecting data aggregated at these levels? Do providers have the capability to readily aggregate data by county or Census tract? If not, what are the burdens associated with aggregating data at these levels? If data is collected or aggregated on a level other than by ZIP code, should this effect the level at which data is published? How would privacy considerations affect the level at which data gets published?

7. *Enrollment Process Data.* The Commission also seeks comments on whether to collect information about the enrollment process and customer interactions with provider representatives. Such information could relate to the administrative efficacy of the Affordable Connectivity Program. In particular, information about interactions between subscribers and provider representatives and the type of interaction, such as enrollment assistance in-person, over the phone, or via email, could help the Commission combat enrollment misconduct. The Commission thus seeks further comments on whether the Commission should, in the ACP Transparency Data Collection, collect information about the extent to which subscribers enroll in the program using the assistance of provider representatives. Should the Commission collect data on the type of enrollment interaction – in person, telephonically, or via email or other method? Should the Commission collect this information at the subscriber-level or aggregate-level? Should the Commission require providers to upload to NLAD the type of enrollment interaction between subscriber and representative or data relating to which representative was involved? Does the

Commission have the authority collect such information as part of the ACP Transparency Data Collection? What burdens on providers or subscribers would be associated with collecting enrollment-related interaction data from providers?

8. *Digital Divide Performance Metrics.* Furthermore, the Commission seeks comments on whether to collect data related to the digital divide. This information could assist the Commission in determining the efficacy of the Affordable Connectivity Program, particularly with regard to the Commission accomplishments of the performance goal of reducing the digital divide. The Commission therefore seeks further comments on whether it should collect information through this collection about the extent to which ACP subscribers are new or existing broadband subscribers, or are subscribers to multiple broadband plans (e.g., fixed and mobile). Should the Commission collect this information at the subscriber-level or aggregate-level? Does the Commission have the authority to collect such information as part of the ACP Transparency Data Collection? What burdens on providers, particularly small providers, would such a collection entail? If this collection is not the proper venue for such a collection, should the Commission collect the information through statistical sampling, industry or consumer surveys? Would collection of these data present an opportunity to also collect and assess other useful information, for example, related to digital equity and inclusion?

9. *Introductory Pricing and Set-up Fees.* The Commission also seeks comments on whether to make mandatory the submission of information concerning the number of ACP households paying introductory prices or on introductory or time-limited promotional pricing plans and the total number of subscribers who pay set-up fees. In the Order, the Commission made the submission of the total number of subscribers on introductory rates or who pay set-up fees optional, acknowledging the burden that providers face when submitting such granular information. Information on introductory pricing could assist in understanding the growth of the Affordable Connectivity Program, the number of subscribers who may be subject to upcoming price increases, and whether ACP subscribers are predominantly new. Information on set-up fees could assist the Commission in determining the efficacy of the Affordable Connectivity Program, particularly with regard to the accomplishment of the performance goal of reducing the digital divide, given that set-up or installation fees are a barrier to the adoption of broadband internet service. The Commission therefore seeks further comments on whether the Commission should

make the collection of these two data points mandatory. Should the Commission collect this information at the subscriber level or aggregate level? Are there other data fields or information related to introductory pricing or set-up or activation fees that the Commission should collect? Does the Commission have the authority to collect such information as part of the ACP Transparency Data Collection? What burden on providers, particularly small providers, would such a collection entail? Is this collection the proper venue for the collection of this information, and if not, where and how should the Commission collect this information? Would collection of this information help the Commission assess its progress towards digital equity and inclusion?

10. *Quality of Service Metrics.* In the *Broadband Labels Further Notice of Proposed Rulemaking (Broadband Labels FNPRM)*, FCC 22-86, November 17, 2022, the Commission requests comments on whether and how the Commission should collect connection reliability or other quality of service metrics, such as network availability. This information, if collected as part of Broadband Labels, could assist the Commission in determining the value that ACP households are obtaining from their benefit. The Commission seeks comments on whether, as part of this collection, the Commission shall collect any reliability or other quality of service information that may be collected as part of Broadband Labels.

11. *Plan Characteristics.* The Commission also seeks comments on whether it should make the collection of all plan characteristics included on the broadband labels mandatory for legacy or grandfathered plans. In the Order, the Commission made the submission of information included on the broadband labels relating to introductory rates, one-time fees, typical speeds, and typical latency optional for legacy service plans, given their unique features (*e.g.*, lower subscribership rates, not currently offered, no broadband labels etc.). Collecting this information would allow the Commission to ensure that its data set is more robust and not skewed or biased as a result of the exclusion of certain data fields relating to legacy plans. What are the benefits of collecting this information for legacy service plans? What are the burdens associated with such a collection and how can burdens on providers be minimized? Should the Commission collect this information at the subscriber or aggregate level? If the Commission makes the submission of these characteristics mandatory, what should the timeframe for the collection be? Would collecting this information present an opportunity to collect and assess other useful

information, related to digital equity and inclusion, or reducing the digital divide?

12. *All-in Price.* The Commission also seeks comments on whether to require the collection of all-in price, net-rate charged, and the number of subscribers whose monthly net-rate charged is greater than \$0. This information would help the Commission determine its progress toward the goal of reducing the digital divide, the efficacy of the Affordable Connectivity Program, and the value that ACP households are obtaining from the federal subsidy. In the Order the Commission made the submission of the all-in price, the net-rate charged, and the number of subscribers whose monthly net-rate charged is greater than \$0 optional. The Commission seeks comments on whether to make the collection of these characteristics mandatory. What are the benefits of collecting such information? How would all-in price, net-rate charged, or the number of subscribers whose net-rate charge is \$0 be helpful for groups engaging in targeted outreach? Should the Commission make mandatory the collection of any other optional fields? What would the burdens of such a collection impose on providers and in particular, small providers? If the Commission requires the submission of this information, should the Commission collect it at the subscriber or the aggregate levels? What are the benefits and burdens associated with each approach? Would collecting this information present help assess other information, related to digital equity and inclusion, or reducing the digital divide?

13. *Additional Plan Metrics.* The Commission also seeks comments on whether the Commission collects data on additional metrics, including but not limited to low-income plan and connected device offerings. This information could assist the Commission in determining its progress towards the Affordable Connectivity Program goals of reducing the digital divide and ensuring the efficient administration of the program. The Commission seeks comments on whether, as part of this collection, the Commission collects information about the availability of restricted or low-income only service plans, or a provider's connected device offerings. Should the Commission collect information about the availability of low-income plans or connected device such offerings at the subscriber or aggregate level? Would the collection of such information impose a burden on providers, including small providers, or on subscribers? Does the Commission have the authority to collect this information? Are there any privacy concerns raised by the collection of this information? Would collection of these data present an opportunity to also collect and assess other useful information, for example, related to digital

equity and inclusion?

II. PROCEDURAL MATTERS

A. Paperwork Reduction Act

14. The FNPRM may contain proposed new or modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on any information collection requirements contained in the FNPRM, as required by the Paperwork Reduction Act of 1995, Public Law 104-13. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, see 44 U.S.C. 3506©(4), the Commission seeks specific comment on how we might further reduce the information collection burden for small business concerns with fewer than 25 employees.

B. Initial Regulatory Flexibility Analysis

15. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in the FNPRM. Written comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the Notice of Proposed Rulemaking provided on the first page of the item. The Commission will send a copy of the FNPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the FNPRM and IRFA (or summaries thereof) will be published in the Federal Register.

16. *Need For, and Objectives of, the Proposed Rules.* In the Infrastructure Investment and Jobs Act (Infrastructure Act), Congress established the Affordable Connectivity Program (ACP), which is designed to promote access to broadband internet access services by households that meet specified eligibility criteria by providing funding for participating providers to offer certain services and connected devices to these households at discounted prices. The Affordable Connectivity Program provides funds for an affordable connectivity benefit consisting of a \$30.00 per month discount on the price of broadband internet access services that participating providers supply to eligible households in most parts of the country and a \$75.00 per month discount on such prices in Tribal areas. The Commission established

rules governing the affordable connectivity benefit and related matters in the ACP Report and Order.

17. Furthermore, the Infrastructure Act directs the Commission to establish an annual mandatory collection of data relating to the price and subscription rates of each internet service offering of ACP participating providers. The Act also requires the Commission to “revise the rules to verify the accuracy of data submitted pursuant to the rules” no later than 180 days after the rules are promulgated.

18. By way of background, in the *ACP Data Collection Notice*, the Bureau sought comment on the timing requirement, specifically asking how to interpret section 60502(c)(2)’s revision mandate. In response, the Commission only received one comment from ACA Connects, suggesting that its permitted to revise rules in compliance with 60502(c)(2) before collecting any data. In the FNPRM, the Commission interprets the Infrastructure Act as not requiring it to collect data prior to revising its rules.

19. The FNPRM seeks comment on the Infrastructure Act’s rule revision requirement. Specifically, the Commission seeks information on how to improve the data collection rules, including how to track and verify the accuracy of data collected, to protect against inaccuracies, and to reduce burdens. Moreover, the FNPRM seeks comment on whether the timing of this collection, as proposed, satisfies the requirements of the Infrastructure Act to “revise the accuracy” of its rules no later than 180 days after establishing final rules.

20. The Commission also seeks comments on the value of subscriber-level data and how, if the Commission decides to collect such information, obtain consent. Specifically, the Commission seeks comments on the value and burdens associated with collecting subscriber level information, and the methods and merit of collecting consent from new and existing ACP subscribers, including whether consent should be mandatory or optional.

21. Additionally, the Commission seeks comment on whether to collect information about the Affordable Connectivity Program enrollment process as part of this collection, specifically whether the Commission authorizes to collect such information, and how to go about collecting it.

22. The Commission seeks comments on whether to collect information to help measure progress towards accomplishing the Affordable Connectivity Program goals of reducing the digital divide and ensuring effective administration of the program. Specifically, the Commission asks whether its

authorized to collect such information, collect the information as part of this collection, and what methods to use to collect it.

23. The Commission also seeks comments on whether to make the collection of the total number of subscribers who are paying introductory rates or who pay set-up fees in a data-month mandatory. In the Order the Commission permits, but does not require providers to submit this information. The Commission specifically ask whether to make these optional submissions mandatory, and whether it is authorized to collect such information.

24. Furthermore, the Commission seeks comments on whether to make the collection of all-in price, net-rate charged, and the number of subscribers for whom net-rate charged is \$0 mandatory. In the Order the Commission permits, but does not require providers to submit information on the all-in price, the net-rate charged, and the number of subscribers whose net-rate charges is \$0 by ZIP-code and plan identifier. The Commission specifically asks whether to make this collection mandatory, and what the benefits and burdens are with such an approach.

25. The Commission also seeks comments on whether to collect additional quality of service metrics as part of this collection, including connection reliability and outages. The Commission specifically seeks comments on the benefits and burdens associated with collecting additional quality of service metrics, and ask whether to collect such information at the subscriber or aggregate level.

26. The Commission finally, seeks comments on whether to make mandatory the collection of latency, one-time fees, introductory rates, typical speed, and typical latency. In the Order, providers are not required to submit these fields for legacy service plans. The Commission specifically seeks comments on what the benefits and burdens of submitting this information for all plans would be, in addition to whether to collect this information at the subscriber or aggregate level.

27. In executing its obligations under the Infrastructure Act, the Commission intends to establish rules and requirements that implement the relevant provisions of the ACP efficiently, with minimal burden on eligible households and participating providers. These actions are consistent with the Commission's ongoing efforts to bridge the digital divide by ensuring that low-income households have access to affordable, high-quality broadband Internet access service.

28. *Legal Basis.* The proposed actions are authorized pursuant to the Infrastructure Act, div. F, tit. V, sec. 60502(c).

29. *Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply.* The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.” In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act. A small business concern is one that: (1) is independently owned and operated; (2) is not dominant in its field of operation; (3) satisfies any additional criteria established by the Small Business Administration (SBA).

30. *Small Businesses, Small Organizations, Small Governmental Jurisdictions.* The Commission actions, over time, may affect small entities that are not easily categorized at present. The Commission therefore describes here, at the outset, three broad groups of small entities that could be directly affected herein. First, while there are industry specific size standards for small businesses that are used in the regulatory flexibility analysis, according to data from the Small Business Administration’s (SBA) Office of Advocacy, in general a small business is an independent business having fewer than 500 employees. These types of small businesses represent 99.9% of all businesses in the United States, which translates to 32.5 million businesses.

31. Next, the type of small entity described as a “small organization” is generally “any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.” The Internal Revenue Service (IRS) uses a revenue benchmark of \$50,000 or less to delineate its annual electronic filing requirements for small exempt organizations. Nationwide, for tax year 2020, there were approximately 447,689 small exempt organizations in the U.S. reporting revenues of \$50,000 or less according to the registration and tax data for exempt organizations available from the IRS.

32. Finally, the small entity described as a “small governmental jurisdiction” is defined generally as “governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.” U.S. Census Bureau data from the 2017 Census of Governments indicate that there were 90,075 local governmental jurisdictions consisting of general

purpose governments and special purpose governments in the United States. Of this number there were 36,931 general purpose governments (county, municipal and town or township) with populations of less than 50,000 and 12,040 special purpose governments - independent school districts with enrollment populations of less than 50,000. Accordingly, based on the 2017 U.S. Census of Governments data, the Commission estimate that at least 48,971 entities fall into the category of “small governmental jurisdictions.”

33. *Wired Broadband Internet Access Service Providers. (Wired ISPs).* Providers of wired broadband internet access service include various types of providers except dial-up internet access providers. Wireline service that terminates at an end user location or mobile device and enables the end user to receive information from and/or send information to the internet at information transfer rates exceeding 200 kilobits per second (kbps) in at least one direction is classified as a broadband connection under the Commission’s rules. Wired broadband internet services fall in the Wired Telecommunications Carriers industry. The SBA small business size standard for this industry classifies firms having 1,500 or fewer employees as small. U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year. Of this number, 2,964 firms operated with fewer than 250 employees.

34. Additionally, according to Commission data on internet access services as of December 31, 2018, nationwide there were approximately 2,700 providers of connections over 200 kbps in at least one direction using various wireline technologies. The Commission does not collect data on the number of employees for providers of these services, therefore, at this time the Commission is not able to estimate the number of providers that would qualify as small under the SBA’s small business size standard. However, in light of the general data on fixed technology service providers in the Commission’s *2020 Communications Marketplace Report*, the Commission believes that the majority of wireline internet access service providers can be considered small entities.

35. *Wireless Broadband Internet Access Service Providers (Wireless ISPs or WISPs).* Providers of wireless broadband internet access service include fixed and mobile wireless providers. The Commission defines a WISP as “[a] company that provides end-users with wireless access to the Internet[.]” Wireless service that terminates at an end user location or mobile device and enables the end

user to receive information from and/or send information to the internet at information transfer rates exceeding 200 kilobits per second (kbps) in at least one direction is classified as a broadband connection under the Commission's rules. Neither the SBA nor the Commission have developed a size standard specifically applicable to Wireless Broadband Internet Access Service Providers. The closest applicable industry with an SBA small business size standard is Wireless Telecommunications Carriers (except Satellite). The SBA size standard for this industry classifies a business as small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2017 show that there were 2,893 firms in this industry that operated for the entire year. Of that number, 2,837 firms employed fewer than 250 employees.

36. Additionally, according to Commission data on internet access services as of December 31, 2018, nationwide there were approximately 1,209 fixed wireless and 71 mobile wireless providers of connections over 200 kbps in at least one direction. The Commission does not collect data on the number of employees for providers of these services, therefore, at this time the Commission is not able to estimate the number of providers that would qualify as small under the SBA's small business size standard. However, based on data in the Commission's *2020 Communications Marketplace Report* on the small number of large mobile wireless nationwide and regional facilities-based providers, the dozens of small regional facilities-based providers and the number of wireless mobile virtual network providers in general, as well as on terrestrial fixed wireless broadband providers in general, the Commission believes that the majority of wireless internet access service providers can be considered small entities.

37. *Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities.* In this FNPRM, the Commission seeks comment on how to structure its revisions to the rules adopted in this Order, as required by the Infrastructure Act, in addition to whether and how to collect information relating to subscriber-level data, subscriber enrollment, digital divide performance metrics, all-in price, one-time set-up fees, quality of service metrics, plan characteristics or additional performance metrics. To the extent the Commission revises the rules promulgated in this Order or decides to collect enrollment information, subscriber level data, digital divide metrics, or other metrics, participating providers of all sizes may be required to maintain and report information concerning plan prices, subscription rates, and plan characteristics. Any recordkeeping or reporting requirements adopted in this proceeding, however, will apply only to those providers that chose to participate in the Affordable

Connectivity Program.

38. In assessing the cost of compliance for small entities, at this time the Commission cannot quantify the cost of compliance with the potential rule changes that may be adopted and is not in a position to determine whether the proposals in the FNPRM will require small entities to hire professionals in order to comply. The Commission seeks comments on its proposals and their likely costs and benefits as well as alternative approaches. The Commission expects the comments received will include information on the costs and benefits, service impacts, and other relevant matters that should help identify and evaluate relevant issues for small entities, including compliance costs and other burdens (as well as countervailing benefits), so that the Commission may develop final rules that minimize such costs.

39. *Steps Taken to Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered.* The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): “(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities.”

40. The FNPRM seeks comments from all interested parties. The Commission is aware that some of the proposed collections under consideration may impact small entities. The FNPRM does seek comment on the impact of its proposed rules on providers, and small entities are encouraged to bring to the Commission’s attention any specific concerns that they may have with the proposals outlined in the FNPRM.

41. The Commission will evaluate the economic impact on small entities, as identified in comments filed in response to the FNPRM and this IRFA, in reaching its final conclusions and taking actions in this proceeding.

42. *Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rules.*
None.

43. *Ex Parte Rules.* This proceeding shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s *ex parte* rules. Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter’s written comments, memoranda, or other filings in the proceeding, then the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with 47 CFR 1.1206(b). In proceedings governed by 47 CFR 1.49(f), or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable.pdf). Participants in this proceeding should familiarize themselves with the Commission’s *ex parte* rules.

Federal Communications Commission.

Katura Jackson,
Federal Register Liaison Officer.

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